

PART 1911—RULES OF PROCEDURE FOR PROMULGATING, MODIFYING, OR REVOKING OCCUPATIONAL SAFETY OR HEALTH STANDARDS

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AUTHORITY: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); secs. 1, 4, Walsh-Healey Public Contracts Act (41 U.S.C. 35, 38); secs. 2, 4, Service Contracts Act of 1965 (41 U.S.C. 351, 353); sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); sec. 41, Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941); sec. 5(j)(2), National Foundation on Arts and Humanities Act (20 U.S.C. 954(j)(2)); 5 U.S.C. 553; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable. Sections 1911.12 and 1911.18 also issued under 29 CFR part 1911.

SOURCE: 36 FR 17507, Sept. 1, 1971, unless otherwise noted.

§ 1911.1 Purpose and scope.

This part sets forth rules of procedure for promulgating, modifying, or revoking occupational safety or health standards under section 6(b) (1), (2), (3), and (4) of the Williams-Steiger Occupational Safety and Health Act of 1970 and under any of the particular statutes listed in § 1911.2(d) which may also cover the employments affected by the standards. The purpose of the rules is to provide for single proceedings in the setting of standards under the several statutes, in order to assure uniformity of the standards to be enforced under the several statutes and in order to avoid needless multiplicity of rule-

making proceedings dealing with the same subjects and issues relating to occupational safety and health standards.

§ 1911.2 Definitions.

As used in this part, unless the context clearly requires otherwise—

(a) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health.

(b) *Act* means the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590; 29 U.S.C. 650).

(c) *Standard* means an occupational safety and health standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment, and which is to be promulgated, modified, or revoked in accordance with section 6(b) (1), (2), (3), and (4) of the Act.

(d) *Particular statute* means any of the following statutes of particular application: The Act of June 30, 1936, commonly known as the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the Construction Safety Act (40 U.S.C. 333), the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941), or the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.).

§ 1911.3 Petition for the promulgation, modification, or revocation of a standard.

Any interested person may file with the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210, a written petition for the promulgation, modification, or revocation of a standard. The petition should include, or be accompanied by, the proposed rule desired and a statement of the reasons therefor and intended effect thereof.

§ 1911.4 Additional or alternative procedural requirements.

Upon reasonable notice to interested persons, the Assistant Secretary may in any particular proceeding prescribe additional or alternative procedural requirements:

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(a) In order to expedite the conduct of the proceeding;

(b) In order to provide greater procedural protection to interested persons whenever it is found necessary or appropriate to do so; or

(c) For any other good cause which may be consistent with the applicable laws.

§ 1911.5 Minor changes in standards.

Section 6(b), when construed in light of the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), is read as permitting the making of minor rules or amendments in which the public is not particularly interested without the notice and public procedure which is otherwise required. Whenever such a minor rule or amendment is adopted, it shall incorporate a finding of good cause to this effect for not providing notice and public procedure.

[37 FR 8664, Apr. 29, 1972]

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§ 1911.10 Construction standards.

The Assistant Secretary may promulgate, modify, or revoke a standard applicable to employments in construction work, as defined in § 1910.12(b) of this chapter, in the following manner:

(a) The Assistant Secretary shall consult with the Advisory Committee on Construction Safety and Health, established pursuant to section 107 of the Contract Work Hours and Safety Standards Act, in the formulation of a rule to promulgate, modify, or revoke a standard. The Assistant Secretary shall provide the committee with any proposal of his own or the Secretary of Health, Education, and Welfare, together with all pertinent factual information available to him, including the results of research, demonstrations, and experiments. The committee shall submit to the Assistant Secretary its recommendations regarding the rule to be promulgated within the period prescribed by the Assistant Secretary, which in no event shall be longer than 270 days from the date of initial consultation.

(b) Within 60 days after the submission of the committee's recommendations or after the expiration of the pe-

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riod prescribed for such submissions, whichever date is earlier, the Assistant Secretary, if he determines that a rule should be issued, shall publish in the FEDERAL REGISTER a notice of proposed rulemaking. The notice shall include:

(1) The terms of the proposed rule;

(2) A reference to section 6(b) of the Act and to section 107 of the Contract Work Hours and Safety Standards Act;

(3) An invitation to interested persons to submit within 30 days after publication of the notice written data, views, and arguments, which shall be available for public inspection and copying, except as to matters the disclosure of which is prohibited by law;

(4) The time and place for an informal hearing to be commenced not earlier than 10 days following the end of the period for written comments;

(5) A requirement for the filing of an intention to appear at the hearing, together with a statement of the position to be taken with regard to the proposed rule and of the evidence to be adduced in support of the position;

(6) Designation of a presiding officer to conduct the hearing; and

(7) Any other appropriate provisions pertinent to the proceeding.

(c) Any interested person who files an intention to appear in accordance with paragraph (b) of this section shall have a right to participate at the informal hearing.

(d) In lieu of the procedure prescribed in paragraph (b) of this section, the Assistant Secretary may follow the procedure prescribed in paragraph (b) of § 1911.11 providing an opportunity for informal hearing.

[36 FR 17507, Sept. 1, 1971, as amended at 37 FR 12231, June 21, 1972]

§ 1911.11 Other standards.

The Assistant Secretary may promulgate, modify, or revoke a standard applicable to employments other than those in construction work, as defined in § 1910.12(b) of this chapter, in the following manner:

(a) The Assistant Secretary may request the recommendations of an advisory committee appointed under section 7 of the Act. In such event, the Assistant Secretary shall submit to the committee any proposal of his own or of the Secretary of Health, Education,